

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FISH AND GAME

Call to Order: By **CHAIRMAN MIKE SPRAGUE**, on February 13, 2003 at 3:00 P.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. Ken (Kim) Hansen (D)
Sen. Dale Mahlum (R)
Sen. Trudi Schmidt (D)
Sen. Debbie Shea (D)
Sen. Bill Tash (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Jane Hayden, Committee Secretary
Mary Vandembosch, Legislative Branch
Rebecca Sattler, Transcription of Minutes

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 250, SB 251, 2/10/2003

Executive Action: SB 237, Indefinitely Postponed

HEARING ON SB 250

Sponsor: SEN. SAM KITZENBERG, SD 48, Glasgow

Opening Statement by Sponsor:

SEN. KITZENBERG explained that SB 250 revises the future fisheries improvement program. It will establish and implement a new program that promotes community fisheries. He stated that eastern Montana is precluded from the current program, including 21 counties.

EXHIBIT(fis32a01)

{Tape: 1, SB 250; Side: A; Approx. Time Counter: 0 - 2.7}

Proponents' Testimony:

Bob Gilbert, Walleyes Unlimited Montana, stated that they did not support the original form of the bill because it was designed for habitat enforcement for wild fish, and did not allow for stocking ponds. There was little a walleye fisherman could do under the original bill, but this bill is an equity between warm and cold water fisheries. They support the bill in its amended form.

John Wilson, Montana Trout Unlimited, said that future fisheries have done many good things. Now there are 35 times more cutthroat trout in the Blackfoot River than 10 years ago. He said that they appreciate that the money from the walleye fishermen's licenses going into the program as well. This is an acceptable compromise between Walleyes Unlimited and Trout Unlimited.

{Tape: 1, SB 250; Side: A; Approx. Time Counter: 6 - 9.3}

Mike Sedlock, Region 5, Walleyes Unlimited, reiterated the comments from the previous two testimonies, stating that this compromise makes it better for everyone in the State.

Fred Easy, Member of Board of Directors, Prickly Pear Sportsmen Association, stated that they support the bill, but would like to amend it to say "programs that promote recreational fisheries near populated areas." He said that there are too many fisheries in isolated areas.

Sarah McCullough, Montana Audubon, said that they support SB 250; fisheries are beneficial to streams and wildlife populations around Montana.

Chris Smith, Chief of Staff, Montana Fish, Wildlife, & Parks (FWP), read his written testimony.

EXHIBIT(fis32a02)

Robin Cunningham, Fishing Outfitters' Association of Montana (FOAM), said that this bill can be summed up by three words: equity, compromise, community.

{Tape: 1, SB 250; Side: A; Approx. Time Counter: 9.3 - 13.2}

Opponents' Testimony:

George Ochenski, read his written testimony in opposition to SB 250 (Ex 3) and distributed articles in Range magazine (Ex 4) and Montana magazine (Ex 5), a copy of the future fisheries act (Ex 6), the long-range building program proposals for community ponds (Ex 7) and future fisheries (Ex 8), and letters from Hal Harper (Ex 9) and Bud Lilly (Ex 10).

EXHIBIT(fis32a03)

EXHIBIT(fis32a04)

EXHIBIT(fis32a05)

EXHIBIT(fis32a06)

EXHIBIT(fis32a07)

EXHIBIT(fis32a08)

EXHIBIT(fis32a09)

EXHIBIT(fis32a10)

{Tape: 1, SB 250; Side: A; Approx. Time Counter: 13.2 - 29}

{Tape: 1, SB 250; Side: B; Approx. Time Counter: 0 - 3.5}

John Bloomquist, Montana Stockgrowers' Association, stated that the amendment to Page 2, Lines 18-22 changes the intent of the existing language on Line 20. They do not support the creation of another land acquisition program between FWP, Trout Unlimited, and agriculture.

{Tape: 1, SB 250; Side: B; Approx. Time Counter: 3.5 - 5.8}

Informational Testimony:

Mike Barrett expressed his testimony and submitted an exhibit.

EXHIBIT(fis32a11)

{Tape: 1, SB 250; Side: A; Approx. Time Counter: 2.7 - 6}

Questions from Committee Members and Responses:

SEN. McGEE asked about the radical departure from the rest of the bill. **John Wilson** said that once streams are restored, there is no long-term protection for them. The riparian zone is only 100 feet on either side of the stream; the conservation program would allow them to repair and protect the riparian.

SEN. McGEE wondered from whom the riparian was being protected. **John Wilson** replied that they are protected from degradation. He said that re-vegetating the habitat keeps it there. Landowners are in agreement to this as well. **SEN. McGEE** asked why the Committee would want to provide a conservation easement, instead of leaving it with the landowner. **John Wilson** explained that it is still up to the landowner; these are voluntary easements.

SEN. BARKUS had a question regarding a breach of the compromise in that easement is a condition for stream management. **John Wilson** said that the program is completely voluntary.

{Tape: 1, SB 250; Side: B; Approx. Time Counter: 5.8 - 10.8}

SEN. SPRAGUE asked about FWP's understanding of the debate. **Chris Smith** stated that he can see both sides regarding Page 2, Lines 18-22. He expounded on the issue.

SEN. McGEE inquired if a third purpose of the program is to buy land. **Bob Gilbert** explained the process they went through in compromising with Trout Unlimited and the issues they addressed.

SEN. McGEE asked if Lines 18-22 was taken out, it if would put the agreement in jeopardy. **SEN. KITZENBERG** replied that he doesn't think it would.

SEN. SCHMIDT had a question regarding Hal Harper's written testimony. **John Wilson** responded that the bill only deals with habitat projects, not ponds.

{Tape: 1; Side: B; Approx. Time Counter: 10.8 - 19}

SEN. SCHMIDT asked for George Ochenski's opinion on that same question. **George Ochenski** stated that conservation easement were not part of the original deal, and suggested the creation of a community fisheries program on its own.

SEN. BALES and **John Wilson** discussed the funding, and that the money for the easements comes from the future fisheries money and

licenses. They also discussed the fact that riparian areas are generally flood plains, so homes cannot be built there.

{Tape: 1, SB 250; Side: B; Approx. Time Counter: 19 - 25}

SEN. SPRAGUE wondered if the issue is about ownership or access. **John Wilson** explained that the landowner retains the rights to the land; the bill does not provide access to the public.

SEN. SPRAGUE had a question regarding fund use, as stated in Lines 18-22. **John Wilson** said a conservation easement is an "interest in land." He said that the funds are to protect fisheries and riparian areas for a long time. He added that the issue is whether or nor this will create better fisheries.

Closing by Sponsor:

SEN. KITZENBERG closed on SB 250.

{Tape: 2, SB 250; Side: A; Approx. Time Counter: 0 - 6}

EXECUTIVE ACTION ON SB 237

{Tape: 1; Side: A; Comments: on SB 251 TAPE}

Motion: **SEN. BALES** moved that SB 237 DO PASS.

Discussion:

EXHIBIT (fis32a12)

SEN. SPRAGUE asked Chris Smith, FWP, to explain the amendments. **Chris Smith** stated that in some cases, FWP agreed with SEN. BALES' amendments, but there are two differences:

1) In SB 237, Page 1, Line 23, FWP recommends limiting these changes to game hunting violations, and not apply them to fishing violations. This is FWP's recommendation because there are instances where someone accesses waters under the Stream Access Law and trespass, inadvertently. This happens more frequently than with hunting regulations. SB 237 applies potentially stricter penalties in more cases than necessary.

2) With respect to the second and third offenses for criminal trespass where a person is hunting without permission which means that the person unknowingly trespasses--this is not criminal trespass, this is failure to obtain permission. SEN. BALES' amendments would provide stiffer penalties including a \$2000 fine and loss of privileges for five years on the second

offense. On the third offense would be a minimum fine of \$5000 and forfeiture of hunting privileges for life. These are very strict consequences for failure to obtain permission as opposed to criminal trespass.

SEN. SPRAGUE asked Mary Vandebosch to explain SEN. BALES' amendments. **Ms. Vandebosch** explained that the amendments limit the penalties under SB 237 to game animals. In each place where there is an offense it provides that the property must be effectively posted under Section 45-6-201, which is the "orange paint" law. This is something that was not in the bill before. The other substantive change that the amendments cut Section 3 on Page 6 out of SB 237; because it will be restricted to game animals, Section 3 is no longer necessary. For the second and third offense, the penalties only apply to those who fail to obtain permission to hunt big game animals on private property that has been effectively posted. If a person commits the offense of criminal trespass to property during the commission of a fish and game violation, it said you "shall" forfeit your hunting, fishing, trapping, and recreational use privileges. The amendments change it so that you "may" forfeit the privileges and a judge determines that.

SEN. BALES stated that he has a different view on stream access than FWP does. Fishing should not be left out of SB 237 because if there is a flagrant violation across posted land to go fishing, a person is as guilty of trespassing as a person going across posted land to go hunting. To take fishing offenses out of SB 237 sends a mixed message. SB 237 equates the same penalties for the first offense with other violations under Fish and Game laws. As far as the elevated second and third offense, it is limited to big game animals as defined in the statute. The stricter penalties on the second and third offenses were put in to control the habitual and flagrant trespasser. If a person who tries to obey law gets caught will try harder not to do it again.

SEN. SPRAGUE asked Jim Croft, FWP, how he would interpret a fisherman that is caught trespassing carrying fishing equipment.

Mr. Croft responded that we are talking about two separate things. The criminal trespass law is under Section 45, MCA, and Fish and Game laws are under Section 87, MCA. Game wardens do enforce Section 45 Codes in commission of fishing and hunting crimes. However, under SEN. SPRAGUE's example of the violation of stream access law, the fisherman would be cited under the MCA, Section 45 Codes for criminal trespass if the property was posted and the landowner wished to press charges.

SEN. SPRAGUE then asked Jim Croft about the penalties under SB 237. **Mr. Croft** responded that the penalties as written in SB 237

and its amendments are correctly identified as Section 1 only for fishing violations. The other Sections pertain to hunting big game.

SEN. SHEA asked Jim Croft for the definition of "effectively posted." **Mr. Croft** answered that generally under Section 45-6-201, it defines how the property must be posted. Section 45-6-203, explains that notice must be placed upon a structure by marking it with written notice or not with less than 50 square inches of fluorescent orange paint, so it either says "no trespassing," or it is sprayed fluorescent orange which means no trespassing. These notifications must be placed at each outer gate and normal points of access to the property.

SEN. SHEA asked Mr. Croft how many postings would there be on average on a ten-acre property. **Mr. Croft** stated that is really the issue--correctly posting the property for criminal trespass purposes.

SEN. MAHLUM asked Jim Croft what the law requires criminally and knowingly. **Mr. Croft** explained that "criminal trespass" requires a higher level of intent on the violator than "hunting without permission" does. It is FWP's job to attempt to determine which violation has been committed.

SEN. SPRAGUE asked Jim Croft what the punishment is for criminal trespass. **Mr. Croft** stated that the bond for first offense for criminal trespass is \$130. Second offense for criminal trespassing is the same as for the first offense, but a judge can revoke a person's license for any fish and game violation.

SEN. SCHMIDT asked Mary Vandembosch if the amendments addressed the difference between criminal trespass and accidental trespass. **Ms. Vandembosch** explained they do in the sense that it adds the condition that the property must be effectively posted as required under law.

SEN. SCHMIDT asked whether ignorance of the law has anything to do with which offense is charged. **Jim Croft** explained that game wardens determine whether the trespass was accidental, and sometimes they issue "courtesy citations" in lieu of fines. Sometimes the wardens negotiate with the landowner, if they believe the trespass was not purposeful. Landowners have the right to visit with the county attorney and file prosecution on their own behalf, if they disagree with the wardens.

SEN. MCGEE asked about the history behind SB 237. **SEN. BALES** explained that what SB 237 deals with is the proper marking of

property, so the charge of criminal trespass can be easily determined.

SEN. TASH stated that the amendments help clarify SB 237 and remove the habitual offenders from hunting and fishing opportunities.

Motion/Vote: **SEN. BALES** moved that SB 237 BE AMENDED (Exhibit 12). Motion failed 5-5 with **SENS. BALES, BARKUS, HANSEN, McGEE, and TASH** voting aye. **SEN. SHEA** voted by proxy.

Vote: Motion to pass failed 4-6 with **SENS. BALES, BARKUS, HANSEN, and TASH** voting aye. **SEN. SHEA** voted by proxy.

Motion/Vote: **SEN. MAHLUM** moved to REVERSE THE VOTE AND THAT SB 237 BE INDEFINITELY POSTPONED. Reversal carried 6-4.

{Tape: 1, SB 251; Side: B; Approx. Time Counter: 0 - 6.2}

HEARING ON SB 251

Sponsor: **SEN. KEITH BALES, SD 1, Otter**

Opening Statement by Sponsor:

SEN. BALES explained that SB 251 would provide that interests in land for wildlife habitat may be acquired only through lease purchases for a period of four years. It would also require habitat improvement and public hunting access. He said that there is no fiscal note, and explained the amendment.

EXHIBIT(fis32a13)

{Tape: 1, SB 251; Side: B; Approx. Time Counter: 6.2 - 9.4}

Proponents' Testimony:

John Bloomquist, Stockgrowers' Association, stated the reasons for their support of SB 251. He also distributed a copy of Habitat at Montana FWP, from 1988 to date.

EXHIBIT(fis32a14)

Nancy Schlepp, Montana Farm Bureau, said they like to see no net gain in land owned by the government. She said the tax base gets smaller every time the government buys land.

{Tape: 1, SB 251; Side: B; Approx. Time Counter: 10 - 13.6}

Opponents' Testimony:

Chris Smith, Chief of Staff, Montana FWP, presented and went through his written testimony.

EXHIBIT(fis32a15)

George Ochenski, Clark Fork Coalition, read a letter from Matt Clifford, Conservation Director/Staff Attorney for the Coalition.

EXHIBIT(fis32a16)

{Tape: 1, SB 251; Side: B; Approx. Time Counter: 13.6 - 21.5}

Stan Frazier, Helena Hunters' and Anglers' Association, Montana Wildlife Federation, said that they don't think this bill is a good idea. He added that the moratorium leaves them out of once-in-a-lifetime opportunities for the next four years.

Fred Easy, Prickly Pear Sportsmen Association, stated that conservation easements are saving the family ranch; they are adamantly opposed to SB 251.

Robert Rasmussen, Trust for Public Land, explained that there are three options under existing law, and they were put there for a specific purpose. He discussed perpetuity and the cost of land acquisition.

{Tape: 1, SB 251; Side: B; Approx. Time Counter: 21.5 - 29}

{Tape: 2, SB 251; Side: A; Approx. Time Counter: 0 - 0.5}

Corey Swanson, Plum Creek Timber Company, said that conservation easements are important to allow landowners to maintain natural resource use, and to be compensated for public access and habitat. He said that the moratorium would stop the final phase of the Thompson/Fisher easement that receives 75% match from federal dollars. He would like an amendment to grandfather in previous or continued projects.

Sarah McCullough, Montana Audubon, presented her written testimony.

EXHIBIT(fis32a17)

{Tape: 2, SB 251; Side: A; Approx. Time Counter: 0.5 - 4.8}

Informational Testimony:

John Mundinger, former FWP employee, stated that he was asked to testify by the Sponsor. Mr. Mundinger read his informational testimony to the Committee and presented a Report to the 58th Montana Legislature regarding the Wildlife Habitat Protection.

EXHIBIT(fis32a18)

EXHIBIT(fis32a19)

{Tape: 2, SB 251; Side: A; Approx. Time Counter: 4.8 - 12.5}

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. BALES closed on SB 251.

{Tape: 2, SB 251; Side: A; Approx. Time Counter: 12.5 - 18.2}

ADJOURNMENT

Adjournment: 5:15 P.M.

SEN. MIKE SPRAGUE, Chairman

REBECCA SATTLER, Transcriptionist

MS/RS

EXHIBIT (fis32aad)